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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 JUL 27 PM 4:22

SANDRA M. MATHIAS, CLERK
BY: Kelly Gresham

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

**MOTION PURSUANT TO RULE 15.3
FOR DEPOSITION OF WITNESS
JOHN SEARS AND ORDER FOR
EXPEDITED HEARING**

Assigned to Hon. Warren R. Darrow
Division PTB
ORAL ARGUMENT REQUESTED

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy, Jeffrey Paupore, respectfully moves this court pursuant to Arizona Rules of Criminal Procedure, Rule 15.3 to order the deposition of material witness John Sears. This motion is supported by the following:

MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT FACTS

A. Calloway club cover

Following the murder of Virginia Carol Kennedy on July 2, 2008, the Yavapai County Sheriff's Office Deputies ("YCSO") on July 3, 2008 at 9:00 am executed a search warrant on Defendant's Alpine Meadows condominium in Prescott, AZ. During this search a picture was taken of a shelf in Defendant's garage of a Calloway golf club cover. The Calloway club cover was not seized and the search ended at 3:30 pm hours.

During the autopsy around 3:30 pm, the medical examiner determined the victim died of blunt force trauma to her head by a weapon resembling the curvilinear shape of a golf club. YCSO, realizing the Calloway golf club cover in Defendant's garage had evidentiary value,

1 executed a second search warrant that day at 6:40 pm on Defendant's Alpine Meadows
2 condominium. The Defendant was allowed to return to his condominium between the completion
3 of the first and second search. When YCSO conducted the second search warrant, the Calloway
4 golf club cover was no longer in Defendant's garage or residence.

5 On October 23, 2008 the Defendant was arrested for the murder of Virginia Carol
6 Kennedy in Scottsdale, AZ. On that day, Defendant told YCSO he gave the Calloway golf club
7 cover to his attorney John Sears a few days after the murder. Later that same day, YCSO
8 retrieved the Calloway golf club cover from Mr. Sears in Prescott. Mr. Sears is a material witness
9 connecting the Defendant to the Calloway golf club cover.

10 **B. Anonymous Email and Voice in the Vent**

11 On July 21, 2009, Defendant Steve DeMocker, John Sears and Richard Robertson met
12 with Joe Butner Yavapai County Deputy Attorney, Detectives Randy Schmidt and Jimmy Jarrell
13 at the Yavapai County Attorney's Office in Prescott.

14 Mr. Sears wanted to disclose information that Defendant was innocent of murdering his
15 ex-wife. Prior to the meeting and on the record, Mr. Sears waived any claim of attorney client
16 privilege in discussing the voice in the vent and anonymous email.

17 The information provided by the Defendant and Mr. Sears consisted of two reportedly
18 separate, yet corroborating, pieces of information. According to Mr. Sears, on May 19, 2009, an
19 anonymous voice contacted Defendant through the air vent in his cell ("voice in the vent" coined
20 by Defendant) at the Yavapai County Jail in Camp Verde. The voice told Defendant who had
21 killed his wife and why she was killed.

22 One month later, on June 19, 2009, another anonymous person sent an e-mail to Mr. Sears
23 through his e-mail address at the Arizona State Bar. In the e-mail, the anonymous e-mail sender
24 related information about Carol Kennedy's murder, including who had killed her, how she was
25 killed, and why she was killed. Both instances were remarkably similar, but according to Mr.
26 Sears, were sent by different people.

On June 3, 2010, Mr. Sears stated to the Court in trying to admit the anonymous email at
trial, the following:

"There are inherent details inside this e-mail that even the investigator conceded show that
the person had some degree of familiarity with the inside of the victim's home beyond
what was available in the public record. There are aspects of the allegations in this e-mail

1 that are consistent with our investigation of the physical injuries suffered by Carol
2 Kennedy”.

3 *June 3, 2010 Motion in Limine, State v DeMocker, CR20081339, transcript page 7.*

4 After investigating both matters, it was concluded the voice in the vent story was totally
5 fabricated by Defendant and Charlotte DeMocker, under the direction of the Defendant, admitted
6 to sending the anonymous email to Mr. Sears.

7 Mr. Sears is a material witness in the State’s case charging the Defendant with Fraudulent
8 Schemes, Conspiracy, Forgeries, Tampering with Physical Evidence and Contributing to the
9 Delinquency of a Minor in counts IV, V, VI, VII, VIII, IX and X of the Indictment.

10 **C. Estate of Virginia Carol Kennedy**

11 On March 3, 2009, it is alleged Mr. Sears was instrumental in obtaining a written
12 disclaimer of life insurance proceeds signed by the Defendant. On April 13, 2009, Hartford
13 Insurance Company, having received Defendant’s disclaimer, issued two checks totaling
14 \$770,491.67 to the Estate of Virginia Carol Kennedy. At the time, Katie Democker was the
15 Trustee of her mother’s Testamentary Trust and Personal Representative of the Probate Estate.

16 On July 10, 2009, Mr. Sears notarized Defendant’s signature on a document authorizing
17 the resignation of Katie DeMocker as Trustee and the nomination of Renee Girard as Successor
18 Trustee of the Virginia Carol Kennedy Testamentary Trust. According to Ms. Girard, Mr. Sears
19 recommended her as the Successor Trustee of the victim’s Trust.

20 On July 13, 2009, a pleading was filed in *State v. DeMocker*, CR20081339 by Mr. Sears
21 representing that Defendant had been determined to be indigent by the court. It is alleged Mr.
22 Sears had negotiated a fee agreement with the Defendant and had personal knowledge the
23 Defendant controlled \$700,000.00 of the life insurance proceeds on the life of Virginia Carol
24 Kennedy.

25 On August 17, 2009, pursuant to Defendant’s plan, Katie DeMocker transferred
26 \$350,000.00 to Janice DeMocker (Defendant’s mother) who then transferred this money to Mr.
Sears (\$100,000.00) and to the Law Firm of Osborn Maledon (\$250,000.00). On this same date,
Katie DeMocker resigned as Trustee of the Virginia Carol Kennedy Testamentary Trust.

On October 19, 2009, the Defendant said to Ms. Girard: “Do you feel like moving three
hundred and fifty thousand around today?” The Defendant then directed Ms. Girard to transfer

1 \$350,000.00 from the Virginia Carol Kennedy Testamentary Trust account to Defendant's joint
2 bank account with Charlotte DeMocker at Bank of America.

3 On October 23, 2009, a wire transfer in the amount of \$350,000.00 was made from
4 Charlotte and Defendant's joint bank account to the account of Janice DeMocker. On October 27,
5 2009, Janice Democker made out two personal checks. The first was in the amount of \$100,000.00
6 payable to Mr. Sears. The second was in the amount of \$250,000.00 dollars and made payable to
the Law Firm of Osborn and Maledon.

7 Mr. Sears is a material witness in the State's case charging the Defendant with Fraudulent
8 Schemes to obtain a benefit from the Virginia Carol Kennedy Testamentary Trust in count III of the
9 Indictment.

10 **D. Request for Interview from John Sears**

On July 19, 2011 the Yavapai County Attorney Office sent an email to John Sears's
11 requesting available dates for a trial interview. Mr. Sears' responded:

12 **From:** John Sears [mailto:john.sears@azbar.org]

13 **Sent:** Thursday, July 21, 2011 1:21 PM

14 **To:** Rhonda Grubb

15 **Cc:** Craig Williams

16 **Subject:** Re: St v DeMocker Interview request

17 "I have received your request for an informal interview. I have confirmed with current
18 counsel that Mr. DeMocker is unwilling to waive any of the applicable privileges to allow
19 me to be questioned on any such matter. In view of that position, as well as the prior
20 orders of the State Bar, the Yavapai County Superior Court, the Arizona Court of Appeals
and the Arizona Supreme Court sealing certain proceedings, I do not believe there is any
other material or relevant information that I might provide that could be discussed in such
an interview, and I therefore respectfully decline the invitation. If you think a discussion
of what it is specifically that you want to ask me might be productive, please contact me.
John Sears"

21 The State has not responded to the Sears email believing that he would not cooperative
22 given his multifaceted role in this case and his response to the State's informal request for an
23 interview.

24 **E. Deposition of John Sears**

25 Rule 15.3(a) (2) of the Rules of Criminal Procedure permits the deposition of a witness
26 where a party "shows that the person's testimony is material to the case ... that the person was

1 not a witness at the preliminary hearing ... and that the person will not cooperate in granting a
2 personal interview." This Rule was presented in context of the issue before this Court.

3 The State has tried informally to interview Mr. Sears as a material witness in this case and
4 for the reasons state, he refused to cooperate. Given Mr. Sears' role in this case, it is foreseeable
5 that even if this court granted this motion, the parties would end up back before this court on
6 more than one occasion trying to complete his deposition. In the interests of getting at the facts
7 without undue delay, the State is requesting this deposition be held in court and on the record.
8 Objections to either the form or content could be quickly be ruled on by the court and the
9 deposition could continue to conclusion. It is estimated that Mr. Sears' deposition will take 2-3
10 hours.

CONCLUSION

11 The State has listed John Sears as a witness in its case in chief. The above facts
12 demonstrate Mr. Sears is a material witness in eight (8) charges contained the in the Indictment.
13 In addition, Mr. Sears, for over 3 months without informing law enforcement, secreted the
14 Calloway golf club cover, that was delivered to him by the Defendant. The item alleged to be a
15 part of the murder weapon used in this case.

16 The State has no intentions of questioning Mr. Sears on any confidential or privileged
17 conversations he may have had with the Defendant. In situations where Mr. Sears has spoken on
18 the record, or there has been a waiver of the attorney-client privilege, or where he has acted alone
19 or in concert with the Defendant, the State, in order to be properly prepared for trial, has to
20 depose Mr. Sears.

21 **RESPECTFULLY SUBMITTED** this 27th day of July, 2011.

22 **Sheila Sullivan Polk**
23 **YAVAPAI COUNTY ATTORNEY**

24 By: _____

25 **Jeffrey Paupore**
26 Deputy County Attorney

27 **COPY** of the foregoing **Emailed** this
28 27th day of July, 2011, to:

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